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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 MYRIAM ZAYAS,

8 Plaintiff,

9 v.

10 MULTICARE HOSPITAL,

11 Defendant.  
12

Cause No. C21-0350RSL

ORDER OF DISMISSAL  
WITH LEAVE TO AMEND

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14 This matter comes before the Court on defendant's "Motion to Dismiss." Dkt. # 13.  
15 Plaintiff alleges that Child Protective Services ("CPS"), an agency within the Washington State  
16 Department of Children, Youth & Families, has put in place an intentional and deliberate  
17 scheme to take newborn children away from Caucasian mothers so as to satisfy "hopeful  
18 adopting parents and the federally funded adoption agency (Child Protective Services)." Dkt. # 7  
19 at 5 and 8. Plaintiff has not, however, named CPS or the State of Washington as a defendant,  
20 instead suing MultiCare Hospital for the part it allegedly played in the loss of two of plaintiff's  
21 children. Plaintiff accuses MultiCare, acting by and through its employees, of:  
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1 (1) unreasonably failing to provide child care for plaintiff's five-year old child when  
2 plaintiff was in desperate need of medical attention in February 2020;<sup>1</sup>

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4 (2) misleading plaintiff into placing the five-year old with CPS when plaintiff was  
5 admitted to the labor and delivery ward in February 2020;

6 (3) reporting to CPS that plaintiff had tested positive for drugs while pregnant;<sup>2</sup> and

7  
8 (4) assisting CPS' scheme to such an extent that plaintiff felt compelled to put her  
9 newborn baby up for adoption in February 2020.

10 Plaintiff further alleges that MultiCare has "several contracts with [CPS] so [it] must support  
11 [CPS'] cause and . . . actions at all times" (Dkt. # 7 at 6) and that, although MultiCare reports  
12 positive drug test results no matter what the mother's nationality, it is aware that CPS utilizes  
13 these reports in an unfair and discriminatory way (Dkt. # 7 at 8).

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15 Plaintiff alleges that CPS has violated her constitutional rights and that those violations  
16 would not have been possible absent MultiCare's actions. She asserts a claim under 42 U.S.C.  
17 § 1983 and seeks injunctive relief prohibiting MultiCare from contacting CPS during her  
18 existing and future pregnancies,<sup>3</sup> compelling MultiCare to "void their contract with CPS," and  
19 precluding MultiCare from registering her child's birth with the state. Dkt. # 7 at 16-17.

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23 <sup>1</sup> Plaintiff states that she "firmly believes that hospitals have to have some kind of agreement  
24 with CPS not to build a daycare to help patients." Dkt. # 7 at 10.

25 <sup>2</sup> Plaintiff maintains that MultiCare lacked reasonable cause to suspect abuse or neglect of a child  
26 at the time it reported her to CPS because (a) her unborn baby was a fetus, not a child, until birth and  
27 (b) MultiCare should have waited to see if any harm resulted from the prenatal substance exposure  
before contacting CPS. Whatever the merits of these arguments, they cannot save a Section 1983 claim  
against MultiCare for the reasons discussed in the text.

28 <sup>3</sup> Plaintiff was pregnant when this case was filed in March 2021.

1 MultiCare moved to dismiss plaintiff's claim for failure to state a claim upon which relief can be  
2 granted under Rule 12(b)(6), insufficiency of service and a resulting lack of personal jurisdiction  
3 under Rule 12(b)(2) and (5), and failure to join a necessary party under Rule 12(b)(7) and Rule  
4 19(b).

6 The question for the Court on a motion to dismiss under Rule 12(b)(6) is whether the  
7 facts alleged in the complaint sufficiently state a "plausible" ground for relief. *Bell Atl. Corp. v.*  
8 *Twombly*, 550 U.S. 544, 570 (2007). The Court must "accept factual allegations in the complaint  
9 as true and construe the pleadings in the light most favorable to the nonmoving party."  
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11 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation  
12 omitted). The Court's review is generally limited to the contents of the complaint. *Campanelli v.*  
13 *Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996).

15 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege  
16 "enough facts to state a claim to relief that is plausible on its face." [] *Twombly*,  
17 550 U.S. [at 570]. A plausible claim includes "factual content that allows the court  
18 to draw the reasonable inference that the defendant is liable for the misconduct  
19 alleged." *U.S. v. Corinthian Colls.*, 655 F.3d 984, 991 (9th Cir. 2011) (quoting  
20 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Under the pleading standards of Rule  
21 8(a)(2), a party must make a "short and plain statement of the claim showing that  
22 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). . . . A complaint "that  
23 offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause  
24 of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).  
25 Thus, "conclusory allegations of law and unwarranted inferences are insufficient  
26 to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir.  
27 2004).

28 *Benavidez v. Cty. of San Diego*, 993 F.3d 1134, 1144–45 (9th Cir. 2021). If the complaint fails  
to state a cognizable legal theory or fails to provide sufficient facts to support a claim, dismissal

1 is appropriate. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir.  
2 2010).


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4 Having reviewed the Amended Complaint and the papers submitted by the parties and  
5 construing plaintiff's allegations in her favor, the Court finds as follows:

6 (1) Plaintiff has failed to plausibly allege that MultiCare Hospital is a "state actor" for  
7 purposes of Section 1983. *Mueller v. Auken*, 700 F.3d 1180, 1191 (9th Cir. 2012) ("[The  
8 hospital] did not become a state actor simply because it complied with state law requiring its  
9 personnel to report possible child neglect to Child Protective Services."). Although a private  
10 party can act under state law by conspiring with a state official or agency with "the goal of  
11 violating a plaintiff's constitutional rights," *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002),  
12 plaintiff's allegations of the necessary contract, conspiracy, or agreement are conclusory, and  
13 there is no allegation or suggestion that MultiCare intended to accomplish an unconstitutional  
14 objective in reporting positive test results to the agency.

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16 (2) Plaintiff has failed to properly serve MultiCare Hospital. Federal Rule of Civil  
17 Procedure 4(d)(1) specifies how a request for waiver of service must be addressed and delivered  
18 as well as the contents thereof. The form plaintiff emailed to defendant's counsel was not  
19 addressed to the correct person, did not identify the date on which it was sent, and did not  
20 include a copy of the complaint or means to return a signed copy of the waiver. Plaintiff  
21 declined to correct these errors. In the absence of proper service of process, the Court lacks  
22 personal jurisdiction over defendant.  
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1 For all of the foregoing reasons, defendant's motion to dismiss (Dkt. # 13) is GRANTED.  
2 Because it may be possible for plaintiff to supplement her factual allegations to raise a plausible  
3 inference of a conspiracy to violate her constitutional rights and/or to assert a different cause of  
4 action challenging MultiCare's interpretation of the mandatory reporting requirements, she will  
5 be given twenty-eight days in which to file an amended complaint and properly request a waiver  
6 of service from defendant under Rule 4(d). *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir.  
7 2000).

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11 Dated this 8th day of August, 2022.

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14 Robert S. Lasnik  
15 United States District Judge  
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